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The Unexplained Wealth Act (Criminal Property Forfeiture Act and Corporations Act Amended), S.M. 2024, c. 19

(Assented to June 4, 2024)

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

PART 1
THE CRIMINAL PROPERTY FORFEITURE ACT

C.C.S.M. c. C306 amended

1 ***The Criminal Property Forfeiture Act*** *is amended by this Part.*

2(1) *Section 1 is amended*

(a) by renumbering it as subsection 1(1);

(b) by adding the following definitions:

"controlled substance" means a controlled substance as defined in the *Controlled Drugs and Substances Act* (Canada). (« substance désignée »)

"**responsible officer**" means a person described in subsection 2.4(3). (« dirigeant responsable »)

"trafficking", in respect of a controlled substance, means to sell, give, transfer, transport, send or deliver the controlled substance. (« trafic »)

"unexplained wealth order" means an order described in section 2.3. (« ordonnance pour richesse inexpliquée »)

(c) by repealing the definition "preliminary disclosure order"; and

*(d) in the definition "property", by adding "*and crypto assets such as cryptocurrency*" after "*cash*".*

2(2) *The following is added as subsection 1(2):*

Interpretation — interest in property

1(2) In this Act, a person with an interest in a property includes a person who

(a) has a beneficial ownership interest in the property through one or more trusts, corporations or other arrangements; or

(b) exercises or can exercise control over the property through a family or business relationship.

3 *The following is added after section 2 as part of Part 1:*

Property subject to Act

2.0.1(1) All property located in Manitoba is subject to this Act, including property that is brought into Manitoba by a law enforcement agency.

Timing of acquisition

2.0.1(2) Property is subject to this Act regardless of when it is acquired.

Multiple interests

2.0.1(3) Property is subject to this Act even if more than one person has an interest in the property.

4(1) *Subsection 2.1(1) is amended, in the part before clause (a), by striking out "*proceedings under section 3 (forfeiture order) or subsection 17.2(3)

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4(2) *Subsections 2.1(7) and (10) are amended by striking out "*30 days*" and substituting "*60 days*".*

5 *Clause 2.2(2)(a) is amended by striking out "*proceedings for an order under section 3 (forfeiture order) or subsection 17.2(3) (administrative forfeiture)*" and substituting "*forfeiture proceedings under Part 2 or administrative forfeiture proceedings under Part 3*".*

6 *Part 1.2 is replaced with the following:*

PART 1.2
UNEXPLAINED WEALTH ORDERS

Unexplained wealth order

2.3(1) Before commencing forfeiture proceedings in respect of property under Part 2 or at the same time or after the commencement of such proceedings, the director may apply to the court for an unexplained wealth order that requires a respondent or a responsible officer of a respondent to

(a) provide a written statement to the director

(i) setting out the nature and extent of the respondent's interest in the property that is the subject of the application,

(ii) explaining how the respondent acquired their interest in the property, including how any costs necessary to acquire and maintain the property were met or setting out the arrangements that led to the respondent having possession of the property,

(iii) setting out the sources and amounts of the respondent's lawfully obtained income and assets,

(iv) identifying any persons who have an interest in the property, and

(v) setting out any other information relating to the property that may be specified by the court;

(b) provide the director with specified records and documents; and

examination to be conducted at a time and location set out in the order.

Other requirements in unexplained wealth order

2.3(2) The unexplained wealth order must specify

(a) the form of the statement under clause (1)(a) and the manner in which the statement is to be provided to the director;

(b) the deadline to provide the statement under clause (1)(a) and the records and documents under clause (1)(b) to the director, which may be different; and

(c) the time and location at which the examination under clause (1)(c) is to be conducted or set out the process for scheduling the examination, which must be completed by a specified deadline.

Application to describe property

2.4(1) The notice of application for an unexplained wealth order must describe the property that is the subject of the application with sufficient detail to make it readily identifiable.

Respondents

2.4(2) The following may be named as respondents in the notice of application:

(a) the owner of the property;

(b) any person other than the owner who is in possession of the property;

(c) any person whom the director believes may have an interest in the property.

Responsible officers

2.4(3) If a respondent is not an individual, the director may also name the following as a party to the application:

(a) if the respondent is a corporation, an individual who is an officer or director of the corporation;

partner or limited partner in the partnership,

(ii) an individual who is a director or officer of a corporation that is a partner, general partner or limited partner in the partnership, or

(iii) an individual who is a partner, general partner or limited partner in a partnership that is a partner in the partnership;

(c) if the respondent is a member of a prescribed class of respondents, an individual who is in a prescribed position or relationship with respect to the respondent.

Application without notice

2.4(4) The application may be made without notice unless the court orders otherwise.

Grounds for order

2.5(1) Unless it would clearly not be in the interests of justice, the court must make an unexplained wealth order if the court is satisfied that the director has reasonable grounds to suspect that

(a) the respondent

(i) is the owner of the property,

(ii) is in possession of the property, or

(iii) has an interest in the property;

(b) the fair market value of the property exceeds $125,000;

(c) the known sources of the respondent's lawfully obtained income and assets would be insufficient to enable the respondent to acquire their interest in the property; and

(d) the respondent or a person who does not deal with the respondent at arm's length is or has been involved in unlawful activity.

Interpretation

2.5(2) For the purpose of subsection (1),

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(b) the court may consider any mortgage, charge or other type of security that may reasonably have been available to enable the respondent to acquire their interest in the property;

(c) the known sources of the respondent's income and assets are the sources reasonably ascertainable from available information at the time that an application for an unexplained wealth order is made;

(d) the respondent is deemed to possess the property if the property is available for use by the respondent; and

(e) the respondent and another person are deemed not to be dealing at arm's length with each other if they are deemed for the purposes of the *Income Tax Act* (Canada) to not be dealing at arm's length with each other.

Court may grant extension

2.6 The court may grant one or more extensions to a deadline in an unexplained wealth order.

Conduct of examination

2.7 The examination of a respondent or responsible officer under an unexplained wealth order must be conducted in accordance with Rule 34 of the *Court of King's Bench Rules*, Manitoba Regulation 553/88.

Prohibitions on use of statements made under order

2.8 A statement, record or document provided by a person in response to an unexplained wealth order must not be used or disclosed except in proceedings under or for the purpose of this Act.

7 *Section 5.1 is amended by adding "*forfeiture*" before "*proceedings*".*

9 *Subclause 17.2(1)(c)(ii) is amended by striking out "*$75,000*" and substituting "*$125,000*".*

10(1) *Subsection 17.4(1) is replaced with the following:*

Notice of administrative forfeiture proceedings

17.4(1) The director must give public notice of administrative forfeiture proceedings against the subject property by posting notice of the proceeding on the department's website. Notice may also be given in any other manner that the director considers appropriate in the circumstances.

10(2) *Subsections 17.4(2) and (3) are repealed.*

11 *The French version of clause 17.7(1)(a) is amended by striking out "*en vertu de la partie 2 en vue de l'obtention d'une ordonnance*".*

12 *The following is added after section 17.14 and before the centred heading before section 17.15:*

Amending pleadings after unexplained wealth order

17.14.1 The director may, without leave, amend the pleadings in forfeiture proceedings under Part 2 to address any matters arising as the result of an unexplained wealth order at any time until a trial or hearing date is set.

13 *Clause 17.15(5)(b) is replaced with the following:*

(b) if the property is cash,

(i) the cash is bundled or packaged in a manner that is not consistent with standard banking practices,

(ii) the cash is mailed in a package that does not have any return address information or that has a false name or address in the return address information indicated on the package, or

(iii) the cash is sent for delivery by a shipping company or courier and the person who sends the package does not provide their name or address to the shipping company or courier or provides a false name or address.

Substances Act (Canada),*"; and*

*(b) in clause (c), by adding "*hidden*" after "*after-market*".*

14(2) *Subsection 17.17(3) is amended*

(a) by repealing the definitions "after-market compartment" and "trafficking"; and

(b) by adding the following definition:

"after-market hidden compartment" means a compartment in a conveyance that

(a) is not part of the manufacturer's design of, or equipment for, the conveyance; and

(b) is incorporated into the structure or equipment of the conveyance after it has left the factory in which it was manufactured in a manner that makes the compartment hidden or difficult to detect;

but does not include a storage compartment or safe that is

(c) designed by its manufacturer for after-market installation in a conveyance;

(d) sold to the general public by retail vendors of automotive or security equipment; and

(e) attached to the conveyance as designed by the manufacturer and in accordance with the manufacturer's instructions, if any. (« compartiment après-vente caché »)

15 *The following is added after section 17.17 and before the centred heading before section 17.18:*

Presumption re buildings and controlled substances

17.17.1(1) In a proceeding under this Act in which it is alleged that a building is an instrument of unlawful activity, there is a rebuttable presumption that the building is an instrument of unlawful activity if a controlled substance is found in the building in circumstances or in a quantity consistent with trafficking in the controlled substance.

Dwelling subject to presumption

17.17.1(2) For certainty, this section applies to a dwelling.

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PRESUMPTION — NON-COMPLIANCE WITH UNEXPLAINED WEALTH ORDER

Presumption re non-compliance with unexplained wealth order

17.18 There is a rebuttable presumption that property is proceeds of unlawful activity in forfeiture proceedings under Part 2 if the property is also the subject of an unexplained wealth order and the court determines that a respondent or responsible officer

(a) did not provide the required statement, records or documents by the deadline specified in the order;

(b) knowingly made a false or misleading statement in a response required under the order;

(c) knowingly provided a record or document in response to the order that is not authentic; or

(d) failed to attend the examination required under the order or did not provide all of the information, records and documents requested at the examination.

17 *Clause 23.1(1)(a) is replaced with the following:*

(a) in response to an unexplained wealth order, makes a statement that the person knows to be false or misleading or provides a record or document that the person knows is not authentic;

S.M. 2018, c. 28 (unproclaimed provision repealed)

18 *Section 7 of* ***The Government Notices Modernization Act (Various Acts Amended)****, S.M. 2018, c. 28, is repealed.*

PART 2
THE CORPORATIONS ACT

C.C.S.M. c. C225 amended

19 ***The Corporations Act*** *is amended by this Part.*

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21 *Clause 21.3(2)(a) is amended by striking out "*the register referred to in subsection 21.1(1)*" and substituting "*its register of individuals with significant control*".*

22(1) *Subsection 21.4(2) is amended by striking out "*register of the corporation referred to in subsection 21.1(1)*" and substituting "*corporation's register of individuals with significant control*".*

22(2) *Subsection 21.4(3) is amended by striking out "*register of the corporation referred to in subsection 21.1(1)*" and substituting "*corporation's register of individuals with significant control*".*

23 *The following is added after section 21.4:*

Information from register to authorized officials

21.5(1) On request from an authorized official, a corporation that is required to maintain a register of individuals with significant control must, as soon as practicable after service of the request,

(a) provide the official with a copy of the corporation's register of individuals with significant control; or

(b) disclose to the official any information requested by the official that is contained in the corporation's register of individuals with significant control.

Service of request

21.5(2) Despite section 247, the request from an authorized official may be served on a corporation by

(a) leaving a copy of the request at the corporation's registered office; or

(b) sending the request by regular mail to the corporation's registered office, in which case it is deemed to be served seven days after it was mailed.

requirements.

Request for law enforcement purposes

21.6(1) A member of a police service may request information contained in a corporation's register of individuals with significant control for any of the following purposes:

(a) to conduct an investigation into an offence under a law of Canada or Manitoba;

(b) to conduct policing and criminal intelligence operations in Canada;

(c) to assist another law enforcement agency in Canada for a purpose set out in clause (a) or (b);

(d) to provide information to a law enforcement agency in a jurisdiction outside Canada to assist the agency with an investigation conducted by that agency into an offence under a law in that jurisdiction if such assistance is authorized under an arrangement, written agreement, treaty or law of Canada or Manitoba.

Request for taxation purposes

21.6(2) An official or employee with a taxing authority may request information contained in a corporation's register of individuals with significant control for any of the following purposes:

(a) to administer or enforce a law of Canada or Manitoba that provides for the imposition or collection of a tax, royalty or duty;

(b) to provide information to officials in another jurisdiction in or outside Canada to assist in the administration or enforcement of a law in that jurisdiction that provides for the imposition or collection of a tax, royalty or duty if such assistance is authorized under an arrangement, written agreement, treaty or law of Canada or Manitoba.

Request for regulatory purposes

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purposes:

(a) to administer or enforce a law for which the regulator is responsible;

(b) to assist another agency, public officer or other entity in Canada in the administration or enforcement of a law that is similar to the law for which the regulator is responsible;

(c) to provide information to another agency, public officer or other entity in a jurisdiction outside Canada to assist in the administration or enforcement of a law in that jurisdiction that is similar to the law for which the regulator is responsible if such assistance is authorized under an arrangement, written agreement, treaty or law of Canada or Manitoba.

Request by criminal property forfeiture director

21.6(4) The director of *The Criminal Property Forfeiture Act* may request information contained in a corporation's register of individuals with significant control for any purpose related to the exercise or performance of the director's powers or duties under that Act.

Offence

21.7(1) A corporation that, without reasonable cause, contravenes subsection 21.5(1) is guilty of an offence and is liable on conviction to a fine of not more than $5,000.

Offence — directors and officers

21.7(2) A director or officer of a corporation who knowingly authorizes, permits or acquiesces in the contravention of subsection 21.5(1) by the corporation commits an offence, whether or not the corporation has been prosecuted or convicted, and is liable on conviction to a fine of not more than $200,000, or to imprisonment for a term of not more than six months, or both.

 The following is added after section 23 as part of Part IV:

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"authorized official" means a person authorized under section 21.6 to request information contained in a corporation's register of individuals with significant control. (« fonctionnaire autorisé »)

"police service" means

(a) a police service established or continued under *The Police Services Act*; and

(b) the Royal Canadian Mounted Police. (« service de police »)

"register of individuals with significant control" means the register maintained by a corporation under section 21.1. (« registre des particuliers qui exercent un contrôle important »)

"regulator" means any of the following:

(a) The Manitoba Securities Commission continued under *The Securities Act*;

(b) the Financial Transactions and Reports Analysis Centre of Canada established under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada);

(c) a prescribed agency, public officer or other entity whose authority to regulate is based on a law of Canada or Manitoba. (« autorité de réglementation »)

"taxing authority" means an agency, branch or department of the Government of Canada or the Government of Manitoba that is responsible for administering or enforcing a law of Canada or Manitoba that provides for the imposition or collection of a tax, royalty or duty. (« administration fiscale »)

PART 3
COMING INTO FORCE

Coming into force

25 *This Act comes into force on the day it receives royal assent.*